

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF COMMERCE

In the Matter of My First House, Inc.; Go
Zone Real Estate Club, LLC; Ronald
Hillman; The CAL Group; CAL Realty;
Charles Tomasello; William Rodwell; and
Thomas Easter

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on October 19, 2011, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota.

Michael J. Tostengard, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, MN 55101-2130, appeared on behalf of the Minnesota Department of Commerce (Department).

My First House, Inc.; Go Zone Real Estate Club, LLC; and Ronald Hillman (collectively Respondents) did not appear for the hearing in person or through counsel.

Eric D. Wooten, Wooten Law Firm, PLLC, 1617 25th Avenue, Second Floor, Gulfport, MS 39501, previously appeared for The CAL Group, CAL Realty, Charles Tomasello, William Rodwell, and Thomas Easter, solely for the purpose of disputing subject matter and personal jurisdiction. The Department reached a settlement with those parties prior to the hearing; accordingly, they did not appear and were not required to do so.

The record closed upon the default of Respondents My First House, Inc.; Go Zone Real Estate Club, LLC; and Ronald Hillman on October 19, 2011.

STATEMENT OF ISSUES

Are Respondents My First House, Inc.; Go Zone Real Estate Club, LLC; and Ronald Hillman subject to discipline because:

1. They offered and/or sold unregistered securities in the form of investment contracts and provided promissory notes, in violation of Minn. Stat. § 80A.49 (2010); and

2. They engaged in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person by failing to return investor funds as promised, in violation of Minn. Stat. § 80A.65 (2010).¹

Based upon the files, records, and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On April 21, 2011, the Department mailed a copy of the Notice and Order for Hearing, Notice of Prehearing Conference, and Statement of Charges by first-class mail to Respondents My First House, Inc.; Go Zone Real Estate Club; and Ronald Hillman.² The Notice of Prehearing Conference scheduled a prehearing conference to take place on June 2, 2011.

2. The Notice and Order for Prehearing Conference contained the following notice:

Respondents' failure to appear at the prehearing conference may result in a finding that Respondents are in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that [the Department's] proposed disciplinary action may be upheld.³

3. The Prehearing Conference took place by telephone. Respondents participated in the telephone prehearing conference without counsel. During the conference, the Administrative Law Judge set deadlines for filing dispositive motions based on personal and subject matter jurisdiction and scheduled a hearing to take place on October 19-20, 2011, at the Office of Administrative Hearings in St. Paul, Minnesota.⁴ Respondents My First House, Inc.; Go Zone Real Estate Club, LLC, and Ronald Hillman asserted no objection to this proceeding based on lack of jurisdiction.⁵

4. On October 19, 2011, the Respondents failed to appear for the hearing. They did not contact the Administrative Law Judge prior to the hearing to request that the hearing be rescheduled or to make other arrangements.

5. Because Respondents failed to appear at the hearing, they are in default.

¹ All citations to Minnesota Statutes are to the 2010 edition.

² Affidavit of Service by U.S. Mail (Apr. 21, 2011).

³ Notice and Order for Prehearing Conference at 7.

⁴ First Prehearing Order (June 6, 2011); Letter from ALJ to parties (Aug. 22, 2011).

⁵ First Prehearing Order (June 6, 2011).

6. Pursuant to Minn. R. 1400.6000, the allegations contained in the Statement of Charges are taken as true and incorporated by reference into these Findings of Fact.

7. The Statement of Charges alleges that Respondent My First House was a Nevada corporation that is in default for failing to file annual forms and pay fees; Go Zone Real Estate Club, LLC, is a Nevada Limited Liability Company that was revoked by the Nevada Secretary of State for failure to file renewal paperwork. The Statement of Charges further alleges that on July 18, 2008, Ronald Hillman and My First House gave a presentation in Minneapolis to the Minneapolis Real Estate Investor Association (REIA), a real estate investment club. The presentation concerned the financial merits of investing in residential real estate in Biloxi, Mississippi, and surrounding areas.⁶

8. As provided in the Statement of Charges, Mr. Hillman and My First House made available to investors a joint venture agreement proposing that Respondents would manage real estate for investors who purchased property in Biloxi. If a property was purchased and held for three to five years, the investor and My First House would split the profits. In addition, the upfront partnership fee of \$4,683 would be refunded before profit taking and splits. Hillman assured investors who paid the partnership fee that the fee would be refunded if they elected not to purchase property or were unable to obtain financing.⁷

9. Hillman and My First House did not refund the partnership fee as requested by one investor, D.W., a resident of Wisconsin who had signed the joint venture agreement and paid the partnership fee at the July 2008 presentation in Minneapolis; however, in February 2009, Go Zone Real Estate Club, LLC, issued a promissory note to D.W. agreeing to return the fee with interest within three months.⁸ On March 17, 2009, the Department issued an Order for Written Statement, Production of Documents and Report of Sales to Hillman, who agreed to provide the requested information but did not do so.⁹ The partnership fee has not been refunded to D.W.¹⁰

10. In addition, the Statement of Charges alleges that two Minnesota residents, B.W. and K.W., attended a presentation made by Hillman and My First House and subsequently paid the partnership fee. They were told that if they could not secure financing, the funds would be returned. The Statement of Charges alleges that, contrary to those representations, there was no intention to return the funds.¹¹

⁶ Statement of Charges ¶¶ 1, 3-5.

⁷ *Id.* at ¶ 6.

⁸ *Id.* at ¶¶ 7 & 9.

⁹ *Id.* at ¶ 10.

¹⁰ *Id.* at ¶ 18.

¹¹ *Id.* at ¶¶ 11-13.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce are authorized to consider the charges against Respondents under Minn. Stat. §§ 80A, 45.027, subd. 1, 45.024, and 14.50.

2. Respondents received due, proper, and timely notice of the charges against them, and of the time and place of the hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant procedural legal requirements.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. A default occurs when a party fails to appear at a hearing without the prior consent of the judge. On default, the allegations of and the issues set out in that Notice of and Order for Hearing or other pleading may be taken as true or deemed proved without further evidence.

5. The Respondents are in default as a result of their failure, without the prior consent of the Administrative Law Judge, to appear at the hearing.

6. "Security" means, among other things, an investment contract.¹²

7. The joint venture agreement signed by D.W. at the July 18, 2008, presentation in Minneapolis is a contract between an investor and a management company to split the profits earned after holding real estate for some period of time. It is an investment contract and accordingly is a security under Minnesota Statutes Chapter 80A.¹³

8. It is unlawful for a person to offer or sell a security in this state unless the security is registered under Chapter 80A of Minnesota Statutes.¹⁴

9. Respondents My First House and Ronald Hillman offered or sold an unregistered security to D.W. in Minnesota and are subject to discipline under Minn. Stat. § 80A.49 (Count I).¹⁵

¹² Minn. Stat. § 80A.41 (30).

¹³ See *Securities & Exchange Commission v. W.J. Howey Co.*, 328 U.S. 293 (1946); *State v. Investors Security Corp.*, 209 N.W.2d 405, 408 (Minn. 1973).

¹⁴ Minn. Stat. § 80A.49.

¹⁵ The Statement of Charges does not indicate that B.W. and K.W. were in Minnesota when they signed the joint venture agreement and paid the fee, although it does provide that they traveled to Mississippi to explore the opportunity to purchase property there.

10. It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.¹⁶

11. Respondents My First House, Ronald Hillman, and Go Zone Real Estate engaged in an act, practice, or course of business that operated as a fraud or deceit on D.W., when they promised to refund the partnership fee to D.W. but failed to do so, in violation of Minn. Stat. § 80A.68(3) (Count II).¹⁷

12. The Notice and Order for Hearing and Statement of Charges contains no information about the penalty sought in this case and does not appear to rely on the administrative enforcement provisions of Minn. Stat. § 80A.81, which requires the Commissioner to explicitly state in an order whether the Commissioner will seek to impose a civil penalty for violations of that Chapter.¹⁸

13. Other disciplinary action against the Respondents is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of the Department of Commerce take disciplinary action against the Respondents.

Dated: November 4, 2011

s/Kathleen D. Sheehy
KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Default (not recorded)

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and

¹⁶ Minn. Stat. § 80A.68(3). The Statement of Charges appears to contain a typographic error in referencing § 80A.65 instead of § 80A.68 for Count II.

¹⁷ The Statement of Charges contains a chart indicating that C.C. of St. Louis Park, Minnesota, and Design Development Consultants, LLC, of Eden Prairie, Minnesota, in addition to B.W. and K.W., paid partnership fees to My First House (§ 18), but the Statement of Charges does not allege that these persons either requested or were denied a refund of those fees.

¹⁸ Minn. Stat. § 80A.81(b).

Recommendations. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Mike Rothman, Commissioner, Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101, to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.